General Services Administration
Office of General Counsel
Washington, DC 20405

March 4, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Subject: Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185 and Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, CC Docket No. 94-54.

Dear Mr. Caton:

Enclosed please find the original and nine copies of the General Services Administration's Initial Comments for filing in the above-referenced proceeding.

Sincerely,

Jody B. Burton

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Assistant General Counsel
Personal Property Division

Enclosures

cc: International Transcription Service, Inc.
Janice Myles

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	CC Docket No. 95-185
Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers	CC Docket No. 94-54

INITIAL COMMENTS OF THE GENERAL SERVICES ADMINISTRATION

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March 4, 1996

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Summary

While the Telecommunications Act of 1996 excludes CMRS providers from the definition of Local Exchange Carriers, the Commission should adopt policies and principles regarding CMRS interconnection that are consistent with the new regulatory environment created by the Act.

The Act calls for mutual and reciprocal compensation by carriers for the added costs of transporting and terminating calls on each other's networks. Because of the distinctive cost structure of CMRS systems, and because some CMRS providers charge their subscribers for terminating calls, this principle virtually requires "bill and keep" arrangements for local switching and subscriber access. Dedicated transport should be charged flat, cost-based rates, and the alternative mode of access to the local switch, tandem switching and transport, should be charged according to cost-based usage rates, preferably based on peak hour traffic. For LECs, the Act calls for carriers to negotiate interconnection terms, conditions and rates in agreements that will be filed with, and approved by, the state commissions in conformance with principles enunciated in Commission rules. The same general procedure should be followed for CMRS/LEC agreements, with the proviso that any carrier may receive the most favorable rates available to any other similarly situated carrier. All agreements should be made public.

The Act does not allow for different interconnection rates to be charged for different types of calls. Accordingly, the Commission should not apply interstate access charges to CMRS traffic. The same rates and charges should apply to toll and local calls, and to interstate and intrastate calls.

Finally, the Commission should recognize that the various forms of CMRS services will compete with each other. Whatever regime the Commission adopts must therefore apply to all CMRS providers of two way, point-to-point services.

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INITIAL COMMENTS OF THE GENERAL SERVICES ADMINISTRATION

The General Services Administration ("GSA"), on behalf of the Federal Executive Agencies, submits these Comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in CC Docket Nos. 95-185 and 94-54, released January 11, 1996. In this NPRM, the Commission requested comments and replies on proposed rules concerning Commercial Mobile Radio Service ("CMRS") provider interconnection.

Initial Comments of the General Services Administration
CC Docket Nos. 95-185 and 94-54
March 4, 1996

I. General Comments

In the short time since the Commission released its NPRM, the regulatory environment of the nation's telecommunications industry has experienced a fundamental change. On January 31, 1996, Congress passed the Telecommunications Act of 1996[1] ("the Act"), and on February 8 the Act was signed into law. The Act signals a new era of greatly increased competition and greatly reduced regulation in the telecommunications industry.

Arguably, the Act does not pertain to the issues addressed by the NPRM. Section 3 of the Act excludes from the definition of "Local Exchange Carrier" ("LEC") any person engaged in the provision of a commercial mobile service under §332(c) "except to the extent that the Commission finds that such service should be included in the definition of such term." This exclusion relieves CMRS carriers from the obligations of local exchange carriers listed in §251 and from the Procedures for Negotiation, Arbitration and Approval of Agreements in §252. The Commission is thus free to prescribe interconnection arrangements for CMRS providers and employ procedures for implementing those arrangements that differ from the prescriptions of the Act.

GSA questions the advisability of the Commission's exercising that freedom too extensively. Actions with respect to CMRS providers that are flagrantly at odds with the

[1] Pub. L. No. 104-104, 110 Stat. 56 (1996).

Act's provisions concerning LECs would, in GSA's view, be inconsistent with the Commission's new role in a changed regulatory environment.

A practical reason why the Commission's policies and procedures for CMRS interconnection should follow the Act's provisions concerning LECs is that the present distinction between CMRS and wireline carriers will, over time, become quite blurred. At present, different entities provide wireless and wireline services, and those services are quite distinct from each other. However, if the Commission's policy of fostering wireless service is successful, then radio waves and land lines may become interchangeable modes of access to subscribers' telephones. A call to a given telephone number may reach its destination by wire or by the airwaves depending on the location of the subscriber at a particular moment in time. When CMRS and wireline local exchange services become substitutable, it will be cumbersome, inefficient and possibly infeasible to maintain different procedures to govern interconnection among LECs and between LECs and CMRS providers. A uniform policy will have to apply.

The uniform interconnection policy will have to be that which the Act mandates for LECs. While the Act allows the Commission to use its discretion to treat CMRS providers as LECs, it provides no authority for the Commission to treat LECs as CMRS providers.

For these reasons, the comments which follow contain numerous references to the provisions of the Act pertaining to LECs. GSA will identify only one area where it believes that the Act's provisions concerning LECs can be disregarded with respect to CMRS providers, and that is in the initial prescription of the structure of rates and charges for interconnection between LECs and CMRS providers. After the initial arrangements

are established, subsequent modifications to interconnection rates, terms and conditions should reflect the provisions of the Act concerning interconnections between LECs and other telecommunications carriers.

II. Compensation For Interconnected Traffic Between LECs and CMRS Providers' Networks.

Section II of the NPRM contains an extensive discussion of the principles of interconnection pricing, the pricing options available to the Commission, and the alternative procedures the Commission might adopt in implementing its chosen options. The exposition of these issues is clear, complete and fully reasoned. In GSA's view, this NPRM conforms to the very high standard of regulatory inquiry that this Commission has established over the years.

However, if this NPRM dealt with LECs rather than CMRS providers, much of it would be irrelevant and arguably unlawful. That is because the NPRM reflects an earlier statutory basis that allowed for much more activist regulation than is contemplated in the Act. The spirit of the Act is to encourage the carriers to devise among themselves the most beneficial and mutually agreeable interconnection terms, conditions and charges consistent with certain general principles of cost causation. No longer is it the role of regulation to evaluate pricing principles and prescribe rates. Rather, regulation's functions are to arbitrate disputes and to ensure that the arrangements developed by the carriers conform to statutory standards of mutual cost compensation.

A. Compensation Arrangements

The Commission's discussion under this topic consists of a brief survey of existing compensation arrangements, an exposition of general pricing principles, and a

presentation of a series of alternative pricing options.

The Commission's discussion of pricing principles is a concise and informed review of the predominant approaches to setting prices in a mixed monopoly/competitive market environment where the sum of the Long Run Incremental Costs ("LRIC") of the utility's services is less than the full cost of the utility's operation.

The prices that LECs charge other telecommunications carriers for interconnection, however, will be governed by Section 252(d) of the Act. This Section assigns to the state commissions, not this Commission, primary responsibility for determining the justness and reasonableness of interconnection charges "based on cost (without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element...." Moreover, the state commissions may not approve reciprocal compensation arrangements unless they provide for the recovery of "a reasonable approximation of the additional costs" associated with the transport and termination on each carrier's network of calls originating on other carriers' networks. This provision is not to be construed to preclude "bill and keep" arrangements.[2]

Importantly, it is no longer the role of either this Commission or state commissions to conduct cost-finding investigations. The Act shall not be construed

> to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records

[2] See §252(d) of the Act.

with respect to the additional costs of such calls.[3]

The full implications of these provisions will be determined in the coming months (or possibly years). On initial reading, however, they appear to preclude the sort of exploration of alternative costing and pricing approaches that is contained in Section III.B. of the NPRM. Regulators are no longer expected to propose costing or pricing methodologies, nor is it their function to determine appropriate cost and price levels. Rather, their role is to respond to the pricing plans presented to them by the carriers. That response is to be limited to contested matters concerning compensation for the additional costs one carrier incurs in performing interconnection functions for other carriers.

In making these observations, GSA is not proposing to dismiss the NPRM and defer consideration of CMRS interconnection until the Commission has promulgated interconnection rules pursuant to §252 of the Act. First, the Act excludes CMRS providers from the provisions of those rules, and inclusion would likely require an additional proceeding. Second, these issues are ripe for decision. The NPRM provides an adequate basis for rulemaking, and new Personal Communications Services ("PCS") providers will soon begin operations that require ground rules for their interconnection with the landline networks. Finally, there are characteristics of CMRS systems that distinguish them from wireline networks and justify separate consideration of CMRS/LEC interconnection arrangements. These characteristics, which relate to the costs of

[3] Telecommunications Act of 1996, §252(d)(2)(B)(ii).

subscriber access, the varying forms of CMRS, and the unusual intercorporate relationships, require the Commission's focused analysis.

While CMRS interconnection warrants specific consideration, that consideration nevertheless should recognize that the consequent arrangements and charges must ultimately conform to the prescriptions of the Act. As noted earlier in these comments, the time will come when the present distinctions between CMRS and landline services and carriers will fade and possibly disappear.

The Act requires that each carrier be compensated for the costs it incurs for transporting and terminating calls. GSA submits that for the end office switching and customer access functions, this virtually requires "bill and keep," an arrangement explicitly permitted by the Act. The costs and structure of call terminations by landline and wireless carriers are so different that reciprocal charges, that is, like charges by each carrier to the other, could never appropriately compensate both carriers. Moreover, CMRS providers are exceptional in that many of them charge their subscribers for call terminations. For CMRS providers also to charge the LECs for call terminations would thus constitute double-recovery of cost.

GSA concurs with and supports the Commission's tentative conclusion to employ existing cost-based flat rate charges for dedicated facilities.[4] GSA also endorses the Commission's proposal to employ cost-based and usage-sensitive rates for tandem switching and transport. Since tandem switching and dedicated transport represent alternative forms of access to the LECs end office, it is critical that both be priced at their

[4] NPRM, ¶64.

respective cost levels.[5] As the Commission notes, peak period usage better reflects cost causation than total (or average) usage.[6] Tandem switches should not display the peak period variation and the potential for price-elastic shifting of peak periods that is observed with local switching offices.

GSA does not recommend the other options mentioned in the NPRM. There is no assurance that the existing interconnection charges or arrangements between LECs and CMRS providers are cost based, and the existing LEC to LEC interconnections, whether cost based or not, are not appropriate for CMRS interconnection owing to the very different call termination characteristics of CMRS traffic. This same objection applies to the concept of a uniform rate.

The brief discussion of "Long Term Approach" contains two observations that GSA strongly supports. The first is that interconnection prices should be reasonably cost based. This principle now has the force of law,[7] although the possibility of using cost studies, suggested in ¶76, appears to be contrary to §252(d)(2)(B)(ii) of the Act.

The second point with which GSA concurs is that functionally equivalent forms of network interconnection should be available to all types of networks at the same prices. The NPRM suggests that this principle apply to CMRS and to LEC interconnections.

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[5] It should be noted that the present interstate tandem charge is not set at the level of interstate tandem costs. §69.111(g) of the Commission's rules sets the tandem charge at 20 percent of the interstate tandem revenue requirement. That provision, originally scheduled to expire October 31, 1995, was extended in Fourth Memorandum Opinion and Order on Reconsideration, CC Docket No. 91-213, September 22, 1995.

[6] NPRM, ¶45.

[7] See §252(d)(1) of the Act.

GSA suggests that it should apply as well to all interconnecting traffic, local and toll, and to both jurisdictions, interstate and intrastate. There is simply no justification for charging different calls different rates for exactly the same interconnection functions.

B. Implementation and Compensation Arrangements

1. Negotiations and Tariffing.

In GSA's view, no part of the NPRM is more affected by the Act than Section III.C, which deals with the implementation of LEC to CMRS interconnection arrangements. While GSA has supported the filing of interconnection tariffs, that does not appear to be the intent of Congress. Rather, Congress has prescribed that interconnecting arrangements shall be negotiated, or barring successful negotiations, arbitrated by the state commissions. The state commissions are then responsible for approving or disapproving the arrangements. The Federal Communications Commission assumes responsibility only if the state commissions fail to fulfill their responsibilities.[8]

CMRS is exempt from these provisions, and furthermore, CMRS is subject to Commission jurisdiction under §332(c) of the Communications Act. Thus, the Commission could require tariffing in spite of the provisions of the Act. Such action, however, would contravene the Commission's stated long-term goal, strongly supported by GSA, of uniformity of treatment of LEC and CMRS interconnections. It would therefore appear that intercarrier agreements are the appropriate vehicle for promulgating interconnection terms, conditions and rates.

The Act provides that LEC interconnection agreements containing detailed

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[8] Telecommunications Act of 1996, §252(e)(5).

schedules of itemized rates must be publicly filed with and approved by state commissions. This public filing is the best protection against discrimination, particularly undue preference toward affiliated carriers. Another protection in the Act is the "most favored nation" concept under which any interconnecting carrier automatically has access to the best terms, conditions and rates offered to any other similarly situated carrier.[9] GSA strongly supports adoption of these safeguards for CMRS.

2. Jurisdictional Issues

The Act certainly does not answer the jurisdictional questions posed in ¶96 et seq. of the NPRM. Indeed, the Act appears to disregard most of the jurisdictional distinctions that have become embedded through decades of Commission and Court interpretation of the Communications Act. For example, the Act directs the Commission to promulgate rules that implement the carriers' obligations under §251, but it then conveys to the state commissions the primary responsibility for reviewing, arbitrating and approving the agreements that are negotiated by the LECs pursuant to those rules. The Act makes no distinction among the types of calls, local vs. toll, interstate vs. intrastate. It appears to contemplate that the interconnection agreements approved by the state commissions will apply to all forms of interchanged traffic.

Again, because CMRS providers are not LECs (unless the Commission declares them so), the constraints on direct Commission involvement in the implementation of LEC interconnection arrangements do not apply. Section 332(c) precludes state regulation of

[9] This provision should not preclude contract arrangements which involve term or volume commitments. Those commitments represent legitimate distinctions in intercarrier arrangements that justify price differences.

CMRS except with Commission approval. The Commission would thus appear to have a free hand to prescribe specific rates for CMRS LEC interconnection.

Of the three alternatives posed in ¶ 108-110 of the NPRM, the first and third are unsatisfactory, in GSA's view. The first approach contemplates a continuation of the dual and parallel regulation of interstate and intrastate services. As noted, this jurisdictional dichotomy appears to be inconsistent with the spirit of the Act. GSA hopes it will soon become a thing of the past. It is cumbersome, inefficient and irrational to maintain separate regulation of calls that cross state boundaries from those that do not.

The third alternative, in which the Commission preempts all state responsibility for LEC/CMRS interconnection, is also inconsistent with the spirit of the Act. The Act does not expand the Commission's authority, but rather redefines it. Instead of regulating a specific list of interstate services, the Commission's new role is to establish national policies, procedures and practices governing interconnection of all services among carriers. The state commissions then carry out those policies with respect to individual service agreements. It would therefore be inappropriate for this Commission to attempt to prescribe the form and content of all CMRS/LEC interconnection agreements.

GSA believes that the middle course proposed in ¶ 109 is most consistent with the spirit of the Act. The Commission should establish a framework of policies and practices for CMRS/LEC interconnections, but it should allow the states to implement those policies. This approach will facilitate the movement of CMRS interconnection into the format of the landline interconnection agreements, which is necessary if the two modes of communications are to coalesce and eventually merge.

III. Interconnection For The Origination And Termination Of Interstate Interexchange Traffic.

GSA submits that this section of the NPRM asks questions that should be considered moot by the passage of the Act. The Commission inquires whether the CMRS providers should receive interstate access charges from the interexchange carriers ("IXCs") for the termination of interstate traffic routed from the LECs, and if so, what charges should be assessed.

The basic presumption of this section of the NPRM is that the Commission is free to extend the present system of interstate access charges to CMRS providers. Had the original Senate version of the Act been adopted, this presumption would have been valid. According to the Conference Report, the Senate had provided that nothing in the Act would change or modify the current charges that IXCs pay to LECs.[10] The Conference Agreement, which was enacted into law, has no such provision. The only reference to interstate access charges is in Section 251(g), which states that each local exchange carrier shall continue to provide exchange access to interexchange carriers "in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act" until

[10] Congressional Record - House, January 31, 1996, Page H1109.

superseded by new regulations prescribed by the FCC.[11]

The parenthetical phrase in this provision implies an intention to retain the present interstate access charge structure at least until the Commission changes it. Notably, however, there is no allowance for extending these charges to additional classifications of carriers. While the CMRS providers are not defined as LECs until the Commission chooses to classify them as such, they are telecommunications carriers within the Act's definitions, so the implied prohibition on extending access charges may apply to them.

If the history, derivation and calculation of interstate access charges conformed to the Act's prescriptions for local access charges, there would be no issue in extending them to CMRS providers. That is not the case. Indeed, GSA submits that the present interstate access charge mechanism is totally incompatible with the rate setting prescriptions of the Act.

First, the Act forbids setting rates for interconnection and network elements with reference to a "rate-of-return or other rate-based proceeding."[12] All of the existing interstate access charges are derivative from just such proceedings. Even the rates that are subject to price cap regulation were originally established based on a total interstate rate-of-return finding, prescribed in Part 65 of the Commission's rules.

Next, the Act prescribes that charges for the transport and termination of traffic shall be based on negotiated (or failing negotiation, arbitrated) "reciprocal compensation" arrangements among carriers. No such arrangement shall be accepted unless

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[11] Telecommunications Act of 1996, §251(g).

[12] Id., §252(d)(1)(A)(i).

determined "on the basis of a reasonable approximation of the additional costs of terminating...calls," but not precluding "bill and keep" arrangements. In no case may the FCC or any state commission "engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls."[13]

The present access charges violate all these provisions. They are not based on mutual negotiation, but on FCC prescription. They are not based on the additional cost of calls, but on a fully distributed allocation of costs to the interstate jurisdiction under Part 36 of the Commission's rules. Finally, they were established with particularity on the basis of each carrier's costs, and each carrier is required to maintain records of the costs of each function covered by these rates.

Up to the passage of the Act, it did not matter if intrastate or local access charges differed from interexchange access, or if interstate access rates differed from intrastate rates. The carriers were mutually exclusive, either IXCs or LECs, and the traffic was mutually exclusive, interstate vs. intrastate, toll vs. local.

However, the Act does away with these distinctions. Setting aside the interLATA constraints on the Bell Operating companies, all carriers -- including CMRS providers -- are "telecommunications carriers" and can engage in interstate or intrastate, toll or local service. All traffic is subject to the new, negotiated interconnection rates and arrangements. For this reason, GSA submits that it is inconsistent with the spirit of the Act for CMRS providers to receive access charges for certain calls, those that cross state

[13] Id., §252(a) and (d).

boundaries, but not for local calls under the "bill and keep" arrangement that the Commission has tentatively decided to adopt for local calls.

IV. Application of These Proposals.

This section of the NPRM inquires whether the proposals and options considered should be applied just to the new broadband PCS licensees; to all two way, point-to-point voice communications; or to all CMRS services. The NPRM speculates that there might be benefits from limiting the application to these rules to the broadband PCS carriers soon to enter the wireless communications market.

GSA strongly disagrees with this proposal. While there are differences in the technical capabilities of the various CMRS technologies, for the most part the systems that provide two way voice communications will compete with each other. If so, then it is critical to fair competition that the interconnection arrangements with the landline LECs be comparable, preferably identical, among the CMRS competitors.

This issue is particularly relevant in light of the very different degrees of affiliation with the LECs among these classifications of CMRS providers. Initially, one of the two cellular duopolists was always the incumbent LEC. The Commission has imposed much more restrictive limits on the incumbent LECs' ownership of PCS licenses. Clearly, the LECs would have an incentive to "game" the distinctions among LEC/cellular and LEC/PCS interconnection if they were allowed to create those distinctions.

For this reason, GSA restates its recommendation that the interconnection agreements between LECs and CMRS providers be made public and that any CMRS

provider have the right to the same terms, conditions and rates as any other similarly situated CMRS provider.

V. Conclusion

As the agency vested with the responsibility for acquiring telecommunications services on a competitive basis for use of the Federal Executive Agencies, GSA recommends that the Commission adopt the NPRM's tentative conclusions with regard to the form of compensation between LECs and CMRS providers; that it require agreements between these carriers to be made public and available to any similarly situated carrier; that it apply the same interconnection charges to local, toll and interstate traffic; and that it apply its interconnection rules to all CMRS providers.

Respectfully submitted,

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